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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-201918

DATE: June 2, 1981

MATTER OF: Crown Transfer Co.

**DIGEST:**

Protest that RFP provisions which deviate from standard DAR clauses are improper because DAR Council approved only a "service test" rather than a deviation is without merit where record shows that, regardless of how modifications were characterized, DAR Council carefully reviewed request for change and, in approving service test, met all requirements for approving actual deviation.

Crown Transfer Company (Crown) protests the award of any contract under invitation for bids (IFB) DAHC30-81-B-0021 issued by the Department of the Army. The IFB is for the movement and storage of household goods within certain designated areas.

Crown's primary basis of protest is that the solicitation contains clauses which deviate from those specified for use by the Defense Acquisition Regulation (DAR) and that proper authority for use of those deviating provisions has not been obtained from the the DAR Council pursuant to DAR 1-109. We deny the protest.

The DAR provisions and clauses affected by the changes are contained in DAR section 22, part 6 ("Shipment or Storage of Personal Property") and in section 7. The revisions, according to the Army, were made to more accurately describe the scope of work and the contractor's responsibility for intra-city and intra-area movement of household goods and to distinguish the services required from containerization requirements. For example, DAR §§ 22-601.1 No. 29 and 7-1601.1 were modified to require that the contractor disassemble and reassemble furniture as necessary to insure a safe move,

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while certain contract clauses were deleted or words such as "approved storage facility" and "packing" were substituted for "contractor's facility" and "containerization." DAR § 22-601.1 No. 30 also was changed to provide for storage charges on a daily pro rata basis instead of allowing the contractor to charge the same rate for one day or 30 days of storage, as permitted by the DAR provision.

The Army reports that the procuring activity initially sought deviation approval under DAR §§ 1-109.1 and 1-109.3, but that the Army found it more suitable to have the DAR Council consider the proposed changes in connection with a "service test" under DAR § 1-108(a)(iv) and (v). The DAR Council approved a "service test" of the revised provisions for a two-year period.

The protester's complaint is that because the modifications involve deviations from, rather than implementations of, the DAR, the Army was required to obtain deviation approval under DAR § 1-109 rather than service test approval under DAR § 1-108. In this respect, the protester refers to DAR § 22-602, which states that modifications of schedule formats "will be processed as a request for deviation in accordance with 1-109." The protester's position is that a request for deviation "is more complicated and more thoroughly scrutinized" than is a request for approval of a service test and that had a request for deviation been processed it is possible that the DAR Council would not have granted the request. The protester further suggests that the Army never informed the DAR Council that the service test approval request involved deviations from the DAR.

The DAR does provide two distinct procedures for modifying the traditional procurement approaches. DAR § 1-109 provides for deviations from the DAR, and DAR § 1-109.3 requires that deviations be unanimously approved in advance by the DAR Council when more than one contract is affected by the deviation. On the other hand, DAR § 1-108, which provides for implementation of the DAR by the military departments permits the use of contract forms and clauses when permitted by "interim instructions, including service test of new techniques or methods of procurement \* \* \*." DAR § 1-108(a)(iv) envisions approval of such interim instructions.

It is not clear from the record why the Army viewed this matter as more appropriately involving a service test of "new techniques or methods of procurement" rather than a deviation from existing DAR provisions, since the changes generally involve modifications and clarifications of contractor duties specified in the DAR provisions. Nevertheless, regardless of how the approved changes are categorized it is clear that the body authorized to approve the changes did thoroughly consider the matter and did grant the requisite approval.

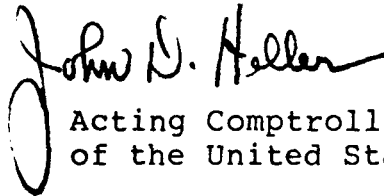
In this respect, the record shows that the DAR Council was informed that the service test request involved deviations from existing DAR provisions, that the Council did carefully consider the matter, that, through the Office of the Assistant Secretary of the Army, it requested the Military Traffic Management Command (MTMC), which has responsibility for establishing military standards for the preparation of household goods for movement, to review what were termed "extensive deviations," and, upon receipt of MTMC's response, approved a two-year service test of the deviating provisions. We have also been informally advised by the Executive Secretary of the DAR Council that the Council normally gives the same substantive review to both deviation requests and requests for service test approval. We have been similarly advised that the approval in this case was unanimous.

Accordingly, we believe that the review and approval envisioned by the DAR for deviations were obtained here and that the characterization of what was approved as a service test rather than a deviation is of no legal consequence with respect to this protest.

The protester also raises one other objection to this procurement. In a memorandum by the Army representative who processed the "deviations," one of the goals of the service test is stated to be the promotion of competition "by use of smaller geographical contract areas of performance." Crown asserts, without explanation, that the IFB didn't reflect this goal. The record shows, however, that the IFB was amended after its issuance to increase the performance areas from 3 to 7.

The areas of performance were redefined so that each new area generally was smaller in size and total workload than the three previous areas. This appears to satisfy the Army's objective to promote competition by enabling smaller contractors, who otherwise may not have the ability to perform the contract for the larger geographic areas, to compete.

The protest is denied.

A handwritten signature in dark ink, appearing to read "John D. Heller". The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke extending to the right.

Acting Comptroller General  
of the United States